

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In Re:

Case No.: 14-72944-ast
Chapter 11

SHERMAN INDUSTRY, INC.

Debtor

-----X

SHERMAN INDUSTRY, INC.

Adv. Proc. No.:

Plaintiff

COMPLAINT

v.

MADALYN F. FARLEY, COMMISSIONER
COUNTY OF NASSAU OFFICE OF
CONSUMER AFFAIRS AND COUNTY OF
NASSAU OFFICE OF CONSUMER AFFAIRS

-----X

COMPLAINT

Sherman Industry, Inc., the Debtor, and Debtor in possession (the “Debtor”) by its attorneys Berger, Fischhoff & Shumer, LLP, as and for its complaint for a judgment against the Defendant (a) - enjoining it from conducting any administrative proceedings or hearings to suspend or revoke the Debtor’s Nassau County Home Improvement Contractor’s License No. H18H1760000 (the “License”) or (b) to void any post petition suspension or revocation of the License.

Nature of Adversary Proceeding

1. This complaint is for a judgment, permanently enjoining Defendants from conducting any administrative proceeding or hearing to suspend or revoke the Debtors Home Improvement Contractor’s License No. H18H1760000 and to void any action taken post petition to do so.

Jurisdiction and Venue and Parties

2. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 (a), 157(b), 1334, and the “Standing Order of Referral of Cases of Bankruptcy Judge of the United States District Court for the Eastern District of New York.”

3. This adversary proceeding is a core proceeding as defined under 28 U.S.C. § 157 (b)(2)(A) and (J).

4. Venue is proper in the Court pursuant to 28 U.S.C. §1409(a).

5. The applicable statutory predicates are Sections 105(a), 362(a) and 541 of the Bankruptcy Code and 7065 of the Federal Rules of Bankruptcy Procedure.

6. The Plaintiff, Sherman Industry, Inc., with an address at 98B Bond Street Westbury, New York 11590, is a New York Corporation and is a seller, installer, and services of ground sourced heat pump systems commonly known as Geo Thermal Systems.

7. Defendant, Madaleyn F. Farley, with an address of 240 Old Country Road, Mineola, New York 11501, is the Commissioner of the County of Nassau Office of Consumer Affairs, which is the agency that has jurisdiction over the issuance of home improvement contractor licenses within Nassau County.

8. Defendant, County of Nassau Office of Consumer Affairs, with an address of 240 Old Country Road, Mineola, New York 11501 has jurisdiction over the issuance of Home Improvement Contract Licenses with the County of Nassau (the “Agency”).

Background as to all Causes of Action

9. On June 25, 2014, the Debtor, Sherman Industry, Inc., filed a petition for relief from creditors pursuant to Chapter 11 of the Bankruptcy Code.

10. Prior to the filing, On June 12, 2014 the Agency issued a letter notifying the Debtor

that it was required to "show cause why your license should not be suspended...".

11. On June 25, 2014 the Debtor notified the Agency that it had filed a Chapter 11 petition and that the hearing to consider the suspension or revocation of its home improvement contractors license was stayed by Section 362(a) of the Bankruptcy Code.

12. On June 26, 2014 the Agency notified the Debtor that it had conducted the hearing in its absence and upon its default had revoked its home improvement contractors license.

13. On June 26, 2014 the Agency agreed to reschedule the hearing for July 1, 2014 but it was not clear whether the revocation had been vacated pending the rescheduled hearing scheduled for July 1, 2014.

14. The Debtor is required to hold a Nassau County Home Improvement Contractors License in order to continue with the installation and servicing of its ground sourced heat pump systems.

15. Pursuant to §541(a) of the Bankruptcy Code the Nassau County Home Improvement Contractors license is property of the estate.

16. Absent an order from the Bankruptcy Court, granting the Agency relief from the automatic stay it cannot proceed against property of the Debtors estate, including any action to suspend or revoke its Nassau County Contractors License.

17. If the Debtor's Nassau County Home Improvement Contractors License is suspended or revoked it will be unable to continue operations in Nassau County thereby rendering it unable to continue its business operations.

18. Prior to the filing of the petition, the Debtor had in various stages of progress, approximately 100 customer contracts, many customers of which have paid substantial, if not full, deposits in advance of their systems being delivered and installed.

As and For the First Cause of Action

19. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 11 as if set forth herein fully below.

20. Pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure Sections 362(a), 541, and §105(a) of the Bankruptcy Code, it is requested that the Court enter an Order enjoining the Defendants Agency from suspending or revoking the Debtor's Nassau County Home Improvement Contractors License No.: H18H176000 absent further order from the Court.

As and For the Second Cause of Action

21. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 20 as if set forth herein fully below.

22. If Defendant revoked or suspended the license, such action should be voided, pursuant to Section 105(a), 362(a) and 541 of the Bankruptcy Code as violation of Section 362(a) of the Bankruptcy Code.

WHEREFORE, Plaintiff respectfully requests that this Court enter a Judgment pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure Section 362(a), 541 and §105(a) of the Bankruptcy Code permanently enjoining the Commissioner of Nassau County of Nassau's Office of Consumer Affairs from suspending or revoking the Debtor's Nassau County Home Improvement Contractors License and voiding any such action.

Dated: June 27, 2014
Woodbury, New York



BERGER, FISCHOFF & SHUMER, LLP
By: Gary C. Fischoff, Esq.

Attorneys for the Debtors and Debtors in Possession
40 Crossways Park Drive
Woodbury, New York 11797
(516) 747-1136